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DECISIONS AND INDECISIONS

Political and Intellectual Receptions of Carl Schmitt

IN 1989 JÜRGEN HABERMAS opined that Carl Schmitt was unlikely to have the same ‘power of contagion in the Anglo-Saxon world’ as had Nietzsche and Heidegger.¹ Too deep and unbridgeable was the spiritual gulf that separated the disgraced *éminence grise* of the ascending Axis power—publicly, at least, a virtual taboo figure within the Federal Republic—from the more liberal climes and political sensibilities of the Anglosphere. Two decades later, such predictions may appear naive. In fact, the trend has been reversed. While the Schmitt reception in German public discourse and in academia—though growing and ever more strident—seems to remain residually tied to certain ethical inhibitions that prevent a full and unqualified embrace of Göring’s former *protégé*, the Anglo-American Schmitt literature, beyond some notable critical engagements, has generated a less restricted rehabilitation. It either parades an authoritarian and part-time fascist thinker as a precursor and ally of the neo-conservative revolution, re-mobilizing Schmitt’s notion of the state of emergency and his concept of the political; or it reads him as a radical—even critical—voice against a world-historical conjuncture characterized by liberal imperialism that flattens all geopolitical enmities and differences.² This dual reception has outflanked the Kantian liberal-cosmopolitan mainstream in a pincer movement.

This ongoing Schmitt revival has been punctuated by two world-historical caesurae: the first was Helmut Kohl’s conservative ‘spiritual-moral turn’ plus German reunification; the second, the politics of the post-9.11 Bush presidency. Whereas the first wave of Schmittiana in the 1980s and 1990s was largely restricted to an exploration of his critique of liberalism and parliamentary democracy—and thus confined

to domestic political theory and legal studies—this second revival has extended Schmitt's intellectual reach over the fields of international relations, political philosophy and international legal theory.³ Here as there, Schmitt has been largely de-contextualized and dissociated from his commitment to and complicity with Nazism. Translations, though highly selective, of Schmitt's voluminous work—most notably the 2003 English edition of *Der Nomos der Erde im Völkerrecht des Ius Publicum*—have kept pace.⁴

Schmitt's double attraction, as a modern classic on the executive state and significant figure against liberal universalism, has prompted a convergence of positions—perhaps in a surprising *complexio oppositorum*—across

¹ Jürgen Habermas, 'The Horrors of Autonomy: Carl Schmitt in English', in Habermas, *The New Conservatism: Cultural Criticisms and the Historians' Debate*, Cambridge 1989, p. 135.

² For reception in Germany, see Thomas Darnstädt, 'Der Mann der Stunde: Die Unheimliche Wiederkehr Carl Schmitts', *Der Spiegel*, 39, 2008, pp. 160–1. For leading statements of the critical current, see Stephen Holmes, *The Anatomy of Antiliberalism*, Cambridge, MA. 1993; William Scheuermann, *Carl Schmitt: The End of Law*, Lanham, MD 1999; Mark Lilla, *The Reckless Mind: Intellectuals in Politics*, New York 2001; Jan-Werner Müller, *A Dangerous Mind: Carl Schmitt in Post-War European Thought*, New Haven 2003. For less restricted rehabilitations, see Chantal Mouffe, *On the Political*, London 2005; Slavoj Žižek, 'Carl Schmitt in the Age of Post-Politics', and other contributions in Mouffe, ed., *The Challenge of Carl Schmitt*, London 1999; Michael Hardt and Antonio Negri, *Empire*, Cambridge, MA 2000; Danilo Zolo, *Invoking Humanity*, London 2002; William Rasch, *Sovereignty and its Discontents*, London 2004; Giorgio Agamben, *State of Exception*, Chicago 2005; Peter Stirk, *Carl Schmitt, Crown Jurist of the Third Reich*, Lampeter 2005; Kam Shapiro, *Carl Schmitt and the Intensification of Politics*, Lanham, MD 2008.

³ For statements in the International Relations literature, see Louiza Odysseos and Fabio Petito, eds, *The International Political Thought of Carl Schmitt: Terror, Liberal War and the Crisis of Global Order*, London 2007; William Hooker, *Carl Schmitt's International Thought: Order and Orientation*, Cambridge 2009; Gabriella Slomp, *Carl Schmitt and the Politics of Hostility, Violence and Terror*, London 2009.

⁴ Carl Schmitt, *The Nomos of the Earth in the Ius Publicum Europaeum*, New York 2003. Key texts of Schmitt's Nazi period—notably his 1939 *Völkerrechtliche Großraumordnung mit Interventionsverbot für Raumpfremde Mächte* [The Order of Greater Spaces in International Law and the Prohibition of Intervention for Space-Alien Powers] and the series of justificatory articles around the 1933 Enabling Laws and the 1934 assassination of SA leaders, like Schmitt's notorious 'Das Gesetz zur Behebung der Not von Volk und Reich' and 'Der Führer schützt das Recht', either remain untranslated or were published by obscure publishing houses. Cf. Carl Schmitt, *Four Articles, 1931–1938*, edited by Simona Draghici, Corvallis, OR 1999.

the non-liberal political spectrum; if not a convergence of their respective evaluative premises. His critical register presents a common reference point for a shared rejection of an apparently post-political neo-liberal order, expressed in the discourse of globalization, which was abruptly re-politicized after 9.11 in a neo-authoritarian direction, now in the discourse of imperialism and empire. This state of affairs seemed to prove Schmitt doubly right: his trend-line diagnostics of the 20th century as the 'age of neutralizations and de-politicizations' could now be conjoined to a near-permanent state of exception—even the exception as the rule—in the conceptualization of the contemporary world-political moment.⁵ The new constellation comprised a hyper-politicized neo-conservative US administration acting outside the conventional remit of international law, while neutralizing its junior partners across the capitalist zone and externalizing international political opposition from the field of legitimate geopolitics altogether—terrorists, pirates and 'rogue states'. At the horizon of this apocalyptic vision, sketched by Schmitt, looms a world without a political exterior: *Pax Americana*. In this context, the Schmittian vocabulary—concept of the political, friend–enemy, state of exception, decisionism, executive government, *nomos*, pan-regions, pan-interventionism and non-discriminatory concept of war—presents not only an important rediscovery and addition to the mainstream international-relations lexicon, but has become a significant idiom for the social sciences at large, presenting a powerful counter-narrative to conventional imperialist liberalism.⁶ Carl Schmitt—and no end!

I. SCHMITTIAN LAW AND ORDER

What is the secret behind Carl Schmitt's contemporaneity and actuality? The argument relies on a broad endorsement of Schmitt's interpretation of the age of the *ius publicum*—the body of maxims and praxes of early modern international law that prevailed, roughly, throughout the period from 1492/1648 to World War One—as a functioning system of legal norms, regulating the excesses of inter-state anarchy in a geopolitical

⁵ Schmitt, 'The Age of Neutralizations and Depoliticizations' [1929], *Telos* 96, 1993, p. 96.

⁶ Even Habermas now conceives the question of world order as a struggle between the Kantian and Schmittian projects. Habermas, *The Divided West*, Cambridge 2006, pp. 188–193. The liberal-cosmopolitan mainstream is critically surveyed in Peter Gowan, 'Neoliberal Cosmopolitanism', *NLR* 11, Sept–Oct 2001, pp. 79–93.

pluriverse without erasing the essence of sovereign statehood: the public and sovereign decision to conduct war. This unity of space and law—termed by Schmitt a *nomos*, in contradistinction to the mediaeval and liberal-capitalist *cosmos*—revolved around five core categories: the state, as the only legitimate subject of war and peace; secularized and absolute state sovereignty; the executive, as the final arbiter over the state of exception; the idea of *iustus hostis*, the just enemy; and the associated concept of ‘non-discriminatory war’. According to Schmitt, the monopolization of warfare by states—*ius belli ac pacis*: the law of war and peace—removed violent conflict from the ideological struggles of ‘civil society’ and re-concentrated organized violence at the level of the state. This arrogation of the monopoly of violence by absolutist states formalized a double distinction: firstly, that between public and private, de-legitimizing and de-militarizing private actors (lords, cities, estates, pirates, military orders) while elevating the public state as the only subject of international law and politics; and secondly, between inside and outside, separating a domestically neutralized and pacified ‘civil society’ from an international sphere of inter-state war and peace. This dualism fortified the distinction between public international law and private criminal law.

While war remained an indispensable and irreducible manifestation of concrete political communities—indeed: the essence of ‘the political’—it was the crowning achievement of early-modern public law to have channelled generalized collective violence—an ongoing European civil war—into a ‘war in form’, conducted exclusively among legally recognized states according to certain rules and conventions. This move entailed, according to Schmitt, a clear distinction between belligerents and neutrals, combatants and non-combatants, states of war and states of peace. Schmitt referred to these achievements as the ‘bracketing of war’, which he lauded as the civilization, rationalization and humanization of war. Modern inter-state warfare came to be conducted among equals, according to certain inter-subjectively agreed and commonly binding legal conventions—a combination of the right to war, *ius ad bellum*, and rights in war, *ius in bello*—which also implied the positive making of peace. The *ius ad bellum* came to be divorced from ‘just cause’ considerations (*iusta causa*), which were declared immaterial for determining the legitimacy of war. This gave rise to the notion of a ‘non-discriminatory concept of war’, which superseded mediaeval just-war doctrines. Thus juridically externalized, the reasons for war-declaration were placed outside any legal, moral or political judgement, implying the retention

of the status of the enemy, even during the fighting, as a just enemy, rather than a foe, criminal or barbarian. Morality, in that sense, came to be divorced from politics proper. A destructive moral universalism, as expressed in the 15th- and 16th-century wars of religion, was replaced by a salutary moral relativism in inter-state relations. Accordingly, the *ius publicum* implied a decisive rupture with mediaeval just-war theories, grounded in the moral universalism of the *respublica christiana*.

This new concept of war—as at once public (that is, restricted to inter-state war), bracketed (that is, circumscribed by rational rules of conduct) and non-discriminatory (that is, morally neutral)—contrasted sharply with the anterior mediaeval practice of violence. Within feudal-Christian Europe, the arms-bearing status of the nobility and, in particular, the instrument of the ‘feud’, rendered all distinctions between the private and the public, as well as between the domestic and the international, futile. Outside feudal-Christian Europe the enemy was categorically rendered as a barbarian, which included, by definition, the threat of his annihilation, exemplified in the Crusades. This shift from the mediaeval *ius gentium*, or law of the peoples, to the *ius inter gentes*, law between peoples, established a historically unprecedented and exemplary *nomos*, capable of combining untrammelled state sovereignty with the anarchy-mitigating effects of international law.

Versailles and after

This line of reasoning was powerfully invoked by Schmitt against the post-World War One criminalization of the German Reich as an ‘outlaw nation’, whose political status as a sovereign state was revoked by the Versailles Diktat. As Germany was not admitted to the peace negotiations, and as ‘war guilt’ and ‘war crime’ were not juridical concepts in inter-state relations (*nullum crimen, nulla poena sine lege*), their formulation and intrusion into international law after 1919 transformed public inter-state law into an incipient world domestic law, starting to domesticate, re-moralize and juridify the inter-political by introducing a new ‘discriminatory concept of war’. This re-inserted just-war considerations into the definition of the legality of warfare. This move, according to Schmitt, castrated the essence of the political—the sovereign decision to go to war against an enemy. Versailles thereby abrogated the cornerstone of the classical *ius publicum*, undermining war’s status as the autonomous, purest and highest form of inter-state relations; it transformed war into a policing

exercise, and thus re-domesticated it. Worse, the Wilsonian invocation of the concept of humanity reconnected post-Versailles conceptions of international law to mediaeval just-war doctrines, which contained a tendency towards the total negation of the 'just enemy' and its degradation to an enemy of mankind—a non-human. Correlatively, it generated a new and distinct liberal way of war, more total in its aims than the bracketed and limited wars of pre-1914 Europe, since it aimed—next to the killing of non-humans—at the direct transformation of politics, society and subjectivities: the making of liberal subjects.

Some followers of Schmitt detect in the hubris of post-Cold War US foreign policy—with its morally recharged discourse of good versus evil, humanity against terrorists, the impossibility of neutrality—a replay, if in intensified form, of the spectre of Versailles. This is embedded in a much broader and essentially continuous proclivity in US foreign policy since World War One and its redefinition of international law. In this, the invocation of humanity leads, paradoxically but logically, to the depoliticization of former 'just enemies', their criminalization as outlaws, even their de-humanization as foes, and the radicalization and bestialization of warfare through its transformation into an annihilatory exercise of unqualified killing; the return of torture as a legitimate means against what are, by definition, non-combatants; and the structural impossibility of concluding peace in the absence of a legal enemy—a war without end, whose temporal ending is equivalent to either the murder of the last terrorist, his incarceration without trial, or his re-creation as liberal subject. The 'war on terror' is also regarded as another incarnation of Wilson's 'war to end all wars', being paradoxically total in purpose and unending in space and time.

The totalizing character of the 'liberal way of war' invariably includes the liberal transformation of targeted states, societies and subjectivities; it is structurally incapable of leaving a defeated enemy state and its society intact, or of re-admitting it into the 'international community'—a historical practice ideal-typically exercised with post-Napoleonic France's re-admission into the 'Concert of Europe', agreed at the Vienna Congress—without its constitutional and social alignment with liberal norms. Strictly speaking, the 'liberal way of war' deserves no longer the appellation 'war'—hence the commotion around the term 'war on terror'—but is transformed into a series of policing actions, including the bio-politicization of populations, otherwise known as humanitarian

intervention. Furthermore, the 'war on terror' after 9.11 does not constitute a departure from more law-based cosmopolitan forms of international politics, but represents an intensification of the logic of liberal world-ordering—the 'neo-conservative turn' in the US Administration notwithstanding. In the end, the argument is that the contemporary period presents a return to the civil wars of the pre-Westphalian period, even though American 'world unity' has immeasurably expanded the efficacy of universal law in a global age, defined as a 'spaceless universalism' driven by the ideology of 'pan-interventionism'.

These developments are inscribed in the long-term logic of the world-historical departure from Schmitt's golden age of limited inter-state wars, which then appears in retrospect as—and is accordingly elevated to the status of—the highest achievement of European civilization: the genius of European jurisprudence. Beyond this, some contemporary observers have re-mobilized, normatively, Schmitt's idea of *Großraum*—a greater territorial space or a pan-region—as the elementary building block for an anti-cosmopolitan, anti-universal organization of the international order based on a plurality of co-existing *Großräume*, each one under the leadership of an imperial nation. Against the imminent threat of a 'spaceless universalism', pan-regions are meant to provide guarantees against the homogenization of the world into a liberal flatland—essential for the maintenance of difference and pluralism; indeed, essential for the very possibility of the political, the friend–enemy distinction, encased in mutually exclusive regional blocs. Viewed synthetically, this account presents a powerful counter-narrative and conceptual apparatus to the reigning discourse of liberal cosmopolitanism; it requires a careful re-examination.

2. AN INTELLECTUAL BIOGRAPHY

In this highly charged context, Reinhard Mehring's *Carl Schmitt: Rise and Fall*, billed by its publisher as the foundational biography on the subject, should come as a welcome clarification, illuminating the significance of an obscure yet scintillating thinker who has posthumously redrawn the conceptual coordinates of the debate on world power.⁷ Mehring is well

⁷ Reinhard Mehring, *Carl Schmitt: Aufstieg und Fall, eine Biographie*, München 2009, 750 pp.

placed to perform this task. Currently professor of political theory at the Pädagogische Hochschule in Heidelberg, he is by background a political theorist, holding a doctorate on Carl Schmitt from the University of Freiburg and a Habilitation on the political philosophy of Thomas Mann from Humboldt University in Berlin.⁸ An unceasing stream of publications on Schmittiana—from his 1989 dissertation, supervised by Wilhelm Hennis, via a 1992 introduction to Schmitt's work and a 2003 edited volume and commentary on Schmitt's *Concept of the Political*, to his 2009 *opus magnum* under review—interspersed by numerous publications on modern German political philosophy (Weber, Heidegger, Mann, Nietzsche), has established Mehring as one of Germany's most prolific Schmitt exegetes.⁹

How does Mehring conceive his task as a biographer? A biography on—next to Heidegger—Germany's most influential 20th-century thinker of the far right raises hopes for a careful explication of the principles of biography as a literary form. No such self-reflexivity is forthcoming. Instead, a few prefatory remarks sketch the premises of Mehring's reading: 'This biography historicizes Schmitt's life and work. It desists from delineating Schmitt's position within the canon of the classics of political thought or the history of public law and refrains from discussing his often warned-against actuality.'¹⁰ Such self-restrictions follow from a series of brusque and apodictic assertions. Schmitt's direct influence, Mehring declares, is today past—a few but significant disciples who salvaged his work for a second liberal reception in the Federal Republic apart. His high systematic pretensions to thought are hardly recoverable and his political positions are today thoroughly discredited. Furthermore, Weimar *étatisme*, nationalism and anti-Semitism no longer exist. Although we experience today, according to Mehring, a new turn towards the *Präventionsstaat* and massive re-politicizations of law, Schmitt's work has to be firmly re-situated in the interwar period and Germany's catastrophic national history since 1914. Otherwise, misinterpretations beckon.

⁸ Mehring, *Pathetisches Denken: Carl Schmitts Denkweg am Leitfaden Hegels. Katholische Grundstellung und Antimarxistische Hegelstrategie*, Berlin 1989; and *Das 'Problem der Humanität': Thomas Manns Politische Philosophie*, Paderborn 2003.

⁹ Mehring, *Carl Schmitt zur Einführung*, 3rd edition, Hamburg 2006; Mehring, ed., *Carl Schmitt: Der Begriff des Politischen. Ein Kooperativer Kommentar*, Berlin 2003.

¹⁰ Mehring, *Schmitt: Aufstieg und Fall*, p. 14.

Having cleared away in a *coup de main* the most controversial aspects of the current revival, Mehring suggests that Schmitt historicized his own intellectual production as a series of answers to specific challenges and situations. Consequently, his work resists reconstruction in terms of a systematic and over-arching theoretical architecture that would lend his intellectual trajectory coherence and continuity. It rather functions as a series of disjointed, time-bound and situative interventions into transient socio-political configurations, apparently without a unifying *Leitmotiv*; a polymorphology whose reconstruction is aggravated by Schmitt's constant re-phrasing, re-coding and recalibration of earlier works, driven by his desire to maintain control over a sprawling *Gesamtwerk*, whose polyvalences escape final judgement. No system is identifiable, no easy transposition of Schmittian categories to a re-configured present possible; this is the basis for Mehring's attempt to insulate and quarantine the historical Schmitt against his contemporary resurgence and actuality—admirers, falsifiers and detractors alike.

Thus conceived, Mehring provides a quasi-autobiographical, personalized and chronological reading, informed by the assumption that Schmitt's intellectual production served as a self-reflexive attempt to seek normative orientation and self-stabilization in tumultuous times. Consequently, Mehring withdraws *ad fontes* into the archives, anchoring his biography in the exploration of recently transcribed diaries of Schmitt's Weimar period and correspondence from the voluminous *Düsseldorfer Nachlass*, supplemented by interviews with former disciples, colleagues and friends, amply evidenced by 133 pages of endnotes. The overwhelmingly German apparatus of secondary literature remains largely unengaged, while the Preface notes in passing the effacement of some sources from Schmitt's National Socialist period and the lack of access to his un-transcribed post-1933 notebooks and diaries. Ultimately, the biography is designed as an attempt to retrieve and reconstruct the key events and turning points—in the style of an *histoire événementielle*—that punctuated Schmitt's life and work, in the register of a minuted chronicle that will result in 'greater facticity'—a facticity apparently identical with that documented by Schmitt himself when taken *à la lettre*.

Unsurprisingly, Mehring readily concedes that 'the biography seeks to avoid strong value-judgements and retro-validations, in an attempt to expose the open potentialities and contingencies of Schmitt's life in slow

motion'.¹¹ In fact, the organization and interpretation of Schmitt's life and work revolves around his career trajectory, as the subtitle *Rise and Fall* indicates. For Schmitt's fall is not tantamount to his entry into the NSDAP on 1 May 1933, but ostensibly linked to his fall in the hierarchy of Nazi offices in late 1936. Apart from the chronicle structured by career progression, no particular angle is offered for the interpretation of Schmitt's biography. 'In the fullness of the material, the reader may sometimes miss a strong thesis'.¹²

Cursus vitae

With the remit of the work thus set—historicization, hermeneutic subjectivism, value-neutrality, minuted chronicle, de-actualization—what is to be expected from Mehring's Life? Can such authorial self-effacement and narrow biographical focus lead us beyond the *privatissima* of Schmitt's inner world? What is the value-added of this massive undertaking? Mehring offers the conventional story of the rise and fall of a social outsider from the Rhenish and Catholic provinces—academic and political *parvenu*, victim of the lure of power, ostracized recluse—distributed across four main sections: rise in Wilhelmine Germany; beyond Weimar *Bürgerlichkeit*; in the stomach of the Nazi leviathan; slow retreat after 1945. The formal stylistic principle of the biography consists in an alternation between dense sketches, often in stenographic style, of Schmitt's personal life-world—friends, colleagues and disciples; academic and political career; intellectual influences and academic vendettas; family life including bigamy; sexual and alcoholic escapades; lecture tours and holidays—and short summaries of his writings, occasionally interspersed by portraits of adversaries and mentors.

Throughout, Mehring situates Schmitt's key works in relation to contemporary politics. The essential contours of Schmitt's research programme are already identifiable in his writings during the late *Kaiserreich*. His 1910 Straßburg dissertation on *Guilt and Types of Guilt* established Schmitt's anti-individualist reading of the state: the category of guilt is constructed through the positive legal norms of the legislature, bracketing the issue of extra-legal and moral guilt as a non-issue for the jurist. His 1912 monograph on *Law and Judgement* sketches Schmitt's

¹¹ Mehring, *Schmitt: Aufstieg und Fall*, p. 14.

¹² Mehring, *Schmitt: Aufstieg und Fall*, p. 14.

decisionist disposition, already against Hans Kelsen's legal positivism, as he defined law (*Recht*) as subject to the act of interpretation by the judiciary, in the course of the application of law (*Gesetz*) to concrete cases; a praxeological move. The gap between the two is filled by an interpretative decision, law is subordinate to judgement. Schmitt's 1914 Habilitation, *The Value of the State and the Significance of the Individual*, pursues the idea of the construction of legal personality through the state, conceptualized as the mediating subject between law and power; the state's legitimacy rests in its ability to codify and realize law as a state of law—assigning juridical subjectivity to the individual, in contrast to pre-state and 'anthropocentric' contractual and natural-law theories. The value of the state lies in its ability to create order. This move envisages legitimacy as immanent to the state itself, in its success or failure to carry out the rule of law, rather than in democratic or any other extra-legal act of legitimation. The successful state of law institutionalizes for Schmitt a period of protection and order—a mediacy against the immediacy of the relation between individual and state in times of crisis. Such a crisis of the state was precipitated by the declaration of war in 1914; it was averted by the declaration of martial law and an Enabling Act that authorized the state executive—the military command—to wield far-reaching emergency powers, abrogating basic constitutional rights.

Schmitt was commissioned in 1915 to formulate a legal argument for the extension of extraordinary executive powers in the post-war period. The combination of the state of siege, civil war and socialist revolution in Bavaria prompted Schmitt to expand on the original task set, resulting in *The Dictatorship* (1921). It provides a history of constitutional law and the modern unitary state, largely discussed in relation to absolutist state theory—absolved from law—and introduces the distinction between commissarial, i.e. delegated and temporary, and sovereign dictatorship. It won Schmitt a position at the Munich University for Commerce and, subsequently, his first full professorial appointment at the University of Greifswald in Prussia at the age of thirty-three. Simultaneously, *Political Romanticism* (1919) settles accounts with the political passivity of a secularized, individualist and privatized social order whose historical bearer, the European bourgeoisie, failed to transcend the occasionalist ironism of an effeminate aesthetics and found itself defenceless against the spectre of socialist revolution and upheaval. The catastrophic end of the *Kaiserreich*—military defeat, dynastic abdication, Versailles Diktat, loss of Alsace-Lorraine, the creation of the Polish corridor, military

occupation of the Rhineland, reparations, loss of colonies, rump-army, republican constitution, war-guilt, Bavarian Soviet Republic, *coups d'état*, general strike—concentrated Schmitt's thought around the question of constitutional and international law in relation to sovereignty. By the end of the Wilhelmine period, Schmitt had found his subject matter.

On the political

These early preoccupations are first systematized programmatically in his 1922 *Political Theology*, which reconceived the state of law and sovereignty from the angle of the exception: 'Sovereign is he who decides on the emergency situation.'¹³ Not Weber's classical definition of sovereignty as the legitimate monopoly over the means of violence, but the monopoly of the decision moves centre-stage. Schmitt develops this key thesis in his attempt to defend and strengthen Article 48 of the Weimar Constitution—executive government by emergency decrees—against legal positivism. This theme cuts across Schmitt's major writings from his Weimar period: *Roman Catholicism and Political Form* (1923), *The Crisis of Parliamentary Democracy* (1923), *The Concept of the Political* (1927), *Constitutional Law* (1928), *The Guardian of the Constitution* (1931) and *Legality and Legitimacy* (1932). Since legal norms could only function in normal situations, legal positivism was liable to a de-personalized, apolitical and ahistorical blindness. Sovereignty, according to Schmitt, is not invested in the state as an impersonal and objective legal subject, an aggregate of rules and statutes, but intermittently crystallizes if and when political crises and social disorder—liminal situations—escape constitutional norms. Such constitutional crises require an extra-legal and eminently political executive decision by a single authority for the re-assertion of order, grounded in the state's right to self-preservation. Moments of indeterminacy and indecision in the objective legal order require rapid and firm, discretionary if not arbitrary, fact-setting acts of subjective decision. *Autoritas, non veritas facit legem*. Decisionism captures the idea that sovereignty resides ultimately in that power that can declare and enforce the state of exception, suspending the constitution in an emergency; its declaration cannot be derived from extant legal norms and standard procedures of decision-making. The sovereign decision is a self-referential and unmediated act of authority—singular, absolute and final. Jurisprudentially, it appears *ex nihilo*. This discretionary element

¹³ Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, Chicago 2005, p. 5.

of 'political surplus value' re-established the primacy of politics over the rule of law. Legality does not exhaust legitimacy.

Decisionism was complemented by Schmitt's concept of the political.¹⁴ It was formally defined in terms of an intensification of the friend-enemy distinction, which demands at some unspecifiable point a political decision on the identification of the internal and external enemy, in order to forge a decisive political unit and maintain existential collective autonomy. The decision activates the differentiation between inside and outside and, within the inside, that which must be externalized and excluded. This precipitated a redefinition of the meaning of democracy. For Schmitt, 'democracy requires therefore, first homogeneity and second—if the need arises—elimination or eradication of heterogeneity', rather than the 'perennial discussions' of parliamentary democracy, grounded in liberal pluralism.¹⁵ This instantiated the consolidation of an otherwise intensely fragmented industrial and mass-democratic society into a socially homogeneous political community—and, ultimately, an ethnically defined (*artgerecht*) *demos*—through the joint first principles of autonomous executive sovereignty: external war and internal repression. The politics of the exception transmuted into the politics of fear as a socially integrative device. By appealing to the *prima ratio* of self-preservation, the overriding threats to security and independence demote and flatten all domestic differences and generate the required unity and unanimity. Democracy, according to Schmitt, is thus re-defined in identitarian terms as the direct representation of a unified people (*Volk*) by the political leadership; this may be mediated by irregular acts of spontaneous acclamation or plebiscitary elements, intermittently renewing the bond between leader and led—the national myth of direct democracy. Schmitt systematically deconstructs the bourgeois state of law in favour of the total state, in order to resolve the crisis of the Weimar Republic.

Schmitt advanced throughout the Weimar period in a series of swift career moves. He left Greifswald for the University of Bonn in 1922, breaking with—and being excommunicated by—the Roman Catholic Church over its refusal to annul his first marriage; then on to the University of Commerce in Berlin in 1928, where he excelled as a frequent visitor of the *Tiergarten* milieu—laconically referred to by Mehring as an erotic state of exception—and finally to the University of Cologne

¹⁴ Schmitt, *The Concept of the Political*, Chicago 1996.

¹⁵ Schmitt, *The Crisis of Parliamentary Democracy*, Cambridge, MA 1985, p. 9.

in 1932, joining Hans Kelsen in the faculty of law. The early 1930s saw an increasing politicization of Schmitt's extra-academic activities as a legal advisor, culminating in his appointment as the leading defence counsel in the trial on the *Preußenschlag*—the abolition of the SPD-governed Prussia as a state within the federal Weimar Republic—by *Reichspräsident* Hindenburg. Schmitt defended the primacy of the national state over its federal components. Although moving increasingly in national-conservative circles, Schmitt only opted publicly for Hitler after the Enabling Laws of 24 March 1933. He joined the NSDAP on 1 May 1933 and was appointed state councillor in Göring's Prussian State Council and professor of public law at the prestigious Humboldt University in Berlin. This was followed by a period of enthusiastic engagement with National Socialism, rabid anti-Semitism and *ex post* juridical justifications for the Enabling Laws and assassinations of the SA elite in 1934.

Concrete-order thought

Schmitt's writings during 1933–36, with the notable exception of the *Three Types of Juristic Thought*, are mainly short tracts and poisoned diatribes; they form the moral and scientific nadir of his career. After his ousting from power—Schmitt, Mehring clarifies, did not dissociate himself from the Nazis in 1936, but the Nazis dissociated themselves from him—he resumed his academic work and produced three major texts: *The Order of Greater Spaces in International Law; Land and Sea*; and *The Nomos of the Earth*, written 1943–45 but published in 1950; as well as the edited 1940 volume, *Positions and Concepts*, collecting the essays written in his struggle against Weimar, Geneva and Versailles. This turn towards international law and international history—insufficiently addressed by Mehring—was premised on a paradigmatic move away from political decisionism, which criticized legal normativism 'from above', to concrete-order-thinking, which attacked legal normativism and decisionism 'from below'.¹⁶ This approach revealed another weakness in normativism, for which the original formation of statehood—indeed, the very presence of socio-political normalcy—is an extra-legal and non-jurisprudential problem. Neither normativism nor decisionism had an answer to the question: what foundational *ur*-act of legitimacy precedes acts of legality? What constitutes territorial order? Any answer had to revise constitutional law in the direction of a sociologically and politically expanded notion of jurisprudence as a new type of juristic

¹⁶ Schmitt, *On the Three Types of Juristic Thought*, Westport, CT 2004.

thought, which Schmitt referred to as concrete-order-thinking. Here, the term *nomos*, in contradistinction to an undifferentiated universal cosmos, was designed to fill this deficiency in conventional jurisprudence. For 'nomos is precisely the full immediacy of a legal power not mediated by laws; it is a constitutive historical event—an act of legitimacy, whereby the legality of a mere law is first made meaningful.'¹⁷ This conception of a law-antecedent act of legitimacy came to inform Schmitt's interpretation of the history of international law—from the Discoveries to the *Großraum*—for it put the question of the *origins* of spatial and legal order centre-stage.

What is concrete-order-thinking, as a sociologically enhanced jurisprudence in international law? Schmitt exemplified his paradigmatic turn most clearly in *The Nomos*. It is premised on a single over-arching thesis, stating that all legal orders are concrete, territorial orders, founded by an original, constitutive act of land-capture. This establishes a primary and radical title to land. Acts of land appropriation and distribution, their partition and classification, form the material matrix that constitutes a *nomos*. Schmitt derives the term *nomos*—in contradistinction to law as statute (*Gesetz*)—from the Greek verb *nemein*, meaning the tripartite act of appropriating, dividing and pasturing. 'Nomos is the immediate form in which the political and social order of a people becomes spatially visible—the initial measure and division of pasture-land, i.e. the land appropriation as well as the concrete order contained in it and following from it.'¹⁸ *Nomos* connotes the situative unity of a spatial order (*Ordnung*), and the position or orientation (*Ortung*) of any community, creating a unity of space and law. Against the prevailing a-spatial, ahistorical and de-politicized legal positivism—which conceived of law, domestic and international, as an abstract web of norms, tied together in a seamless hierarchy, ultimately derived from the *Grundnorm* of the constitution to which even the state is subjected—Schmitt explicitly opts for this brute act of seizure and occupation to argue for the meta-legal origins of any international order which grounds its law in a material-terrestrial reality. Legal concepts have spatial origins. Might generates right.

Greater regions

Schmitt conjoined concrete-order-thinking to his critique of the post-Versailles order and the Monroe Doctrine, in setting out the intellectual

¹⁷ Schmitt, *Nomos*, p. 73.

¹⁸ Schmitt, *Nomos*, p. 70.

terrain for his geopolitical vision of a new greater territorial order. This was encapsulated in his notion of *Großraum*, which argued for the co-existence of several pan-regions, one of which included Central and Eastern Europe, under Germany's imperial hegemony. The turn to the category of the *nomos* had a dual function. Firstly it offered a revisionist history of international law and order, as revolving around a series of land-grabs and 'spatial revolutions', which also served to heap up intellectual resources and arguments to legitimize Hitler's *Raumrevolution* and *Großraumpolitik*. Secondly, it detonated all the pieties of the League of Nations, as Nazi-German expansion was now inscribed within the trans-historical recurrence of primeval *nomos*-constituting acts of conquest and land appropriations. History is re-written in the light of Schmitt's (geo)politics and this historical revisionism justifies German imperialism—a perfect circularity.

The anti-universalist category of the *Großraum* came to form the fulcrum of the theoretical structure of Nazi international law, designed to revolutionize the international system. Schmitt was prescient enough and faithful to his own radical historicism not to harbour any nostalgic notions of a return to the classical inter-state civilization, as he saw it. The age of (nation-)states and the post-Versailles *Kleinstaaterei* (mini-state proliferation) was irretrievably over. The future, he argued, belonged to a different type of political unit, for which the Monroe Doctrine provided the historical and legal precedent. Schmitt's normative agenda for a pluriverse of pan-regions was most clearly set out in his 1939 *Order of Greater Spaces in International Law*, published before the signing of the Molotov–Ribbentrop Pact (August 1939).¹⁹ Schmitt was scathing about the legal double-standards entertained by the US at Versailles: simultaneously advocating the notion of 'national self-determination' and 'non-intervention', conditional upon the acceptance of democracy and capitalism, while declaring the Western Hemisphere—South and Central America and the Pacific—an exclusive American zone. The American hemisphere was *hors de la loi*, i.e. outside the League framework and outside any intervention by European powers.

Inversely, this American greater space would serve as the foil for Schmitt's notion of a German *Großraum*—a self-contained and autarchic

¹⁹ Carl Schmitt, 'Völkerrechtliche Großraumordnung', in Schmitt, *Staat, Großraum, Nomos: Arbeiten aus den Jahren 1916–1969*, Günter Maschke, ed., Berlin 1995, pp. 269–371.

German security zone, immune and off-limits to any intervention by *raumfremde*, i.e. alien, powers. For the Monroe Doctrine had not only prohibited interference by European powers in American affairs, it had also articulated a legal concept of American intervention and limited sovereignty for other states within the Western hemisphere. Hitler cited the 'German Monroe Doctrine' approvingly.²⁰

Falling for Hitler

But what emerges, contrary to Mehring's opening statement on the absence of a unifying centre in Schmitt's work, is not a series of dissonant and incompatible themes and theorems, but a concordant and consistent set of concepts and positions, consecutively and cumulatively developed well before Schmitt embraced the *Führerstaat*. This has direct implications for answering the central question of the biography: why did Schmitt opt in April 1933—after the Enabling Laws—for Hitler? For the conceptual failure in writing biography as a just-so narrative culminates in Mehring's non-answer to this pivotal moment in Schmitt's life. Rather than offering a reasoned explanation for Schmitt's decision, Mehring opts for an exhaustive *Topik* of possible arguments and manages to compile an inconclusive shopping list of no less than forty-three motives—from personal resentment via opportunism to eschatology—which may or may not have played a role in his conversion. Ultimately, Mehring concludes that Schmitt's defence of the Weimar *Präsidialsystem*—executive government by decree—until late in 1932 renders his defection to National Socialism a clear 'break' in his politico-theoretical trajectory, apparently verified by Schmitt's conceptualization of the Nazi seizure of power as a 'legal revolution'. Mehring notes that Schmitt felt depressed in January 1933. 'The fight against Hitler has failed.'²¹ This thesis reiterates the official reading in the Schmitt community.²² But neither Mehring's indecision over Schmitt's motives nor his discontinuity-thesis entirely convince, for the character-profile and political-intellectual positions that the biography has built up for the pre-1933 Schmitt provide stronger evidence for seeing it not as a discontinuity with the arch-authoritarian positions formulated during his struggle with the Weimar

²⁰ Schmitt, 'Völkerrechtliche Großraumordnung', p. 348.

²¹ Mehring, *Schmitt: Aufstieg und Fall*, p. 304.

²² This story is differently recounted in Bernd Rüthers, *Carl Schmitt im Dritten Reich: Wissenschaft als Zeitgeist-Verstärkung?*, 2nd ed., Munich 1990; and Rüthers, *Entartetes Recht: Rechtslehren und Kronjuristen im Dritten Reich*, Munich 1988.

Constitution, but rather as their logical culmination and conclusion. For Schmitt's increasingly radicalized world-view was deeply rooted in the organic continuity of his personal predisposition and political programme. This created a maximum degree of compatibility between the ideology and praxis of National Socialism and Schmitt's temperament and convictions.

For according to Mehring, Schmitt was not only a super-ambitious careerist, disloyal colleague and sexual hazarder, but a life-long critic of political liberalism, parliamentarianism, constitutional legal positivism and the multi-party state, predicated on a deep-seated anthropological pessimism; a disposition that translated into a coherent ideological project which included political decisionism, the primacy of legitimacy over legality and the total state, governing against a heterogeneous society. Additionally, Schmitt valorized national myths as political instruments of mass mobilization and social integration, a lesson learned from Mussolini whom he visited and admired. He was a key protagonist of an anti-federal, unitary Reich. In international politics, Mehring reiterates Schmitt's role as an eminent opponent of the League of Nations, Anglo-American international law and the turn towards a discriminatory notion of war; this established him as one of Germany's leading critics of the interwar order. His notion of the political, grounded in political existentialism, conceptualized the friend-enemy declaration for purposes of national unity, while his anti-Semitism and demands for racial homogeneity chimed with his notion of identitarian democracy. Schmitt's anti-anarchist, anti-Marxist and anti-Bolshevik credentials need no elaboration. His anti-bourgeois resentments against the apolitical security of a life-form guaranteed by the sedated combination of private property and legal guarantees are on record. All of this was informed by a metaphysical disenchantment, whose flip-side was a negative eschatology and a theological philosophy of history, which tried to revalidate an absolute conception of the state as a restrainer against a thoroughly secularized field of social forces, most notably socialism—the anti-Christ.

Even if these building-blocks do not form a 'system' and do not *eo ipso* render a transition to the *Führerstaat* automatic, they supply a rich repertoire of 'positions and concepts'—a theoretical edifice—whose structural affinity with the ideology and praxis of National Socialism Mehring himself makes blindingly clear. In fact, they predestined Schmitt like few others in the German far-right intelligentsia to opt for Hitler. While

these ideological compatibilities support the continuity thesis, the discontinuity thesis appears as a simple case of political opportunism—the switching of political horses at the last minute—earning him the sarcastic epithet *Märzgefallener* (someone who ‘fell’ for Hitler in March) by the older party members within the NSDAP establishment. For them, Schmitt was an unreliable turn-coat, who had jumped on the bandwagon too late.

Mehring’s opening statement notes that Schmitt’s complex personality can hardly be unlocked with a master key. Yet the biography is meant to provide more than a personal psychogram of a stricken and talented thinker in an age of extremes; it aspires to be an intellectual biography of a modern classic of political thought. But if so, then Mehring demonstrates in abundance that Schmitt’s long life revolved around one recognizable intellectual centre of gravity: how to reconceive the relation between constitutional and international law, the state and order, in a secularized age of mass democracy and war, through regrounding legitimate authority in a political theology of decisionism—in order to devise a politico-scientific programme of counter-revolutionary executive ultra-authoritarianism, which revalidates sovereignty as the purely political, beyond the state of law, while drawing sustenance from enemy-declarations to secure existential and collective political unity? This deep and underlying problematic forms the *basso continuo* of Schmitt’s entire *opus*, from his early writings in the Wilhelmine period to the *Political Theology II* of the Federal Republic.²³

3. A SALVAGE OPERATION?

But can we extricate—beyond either demonization or apologia—Schmittian insights from the odium of their association with Nazism? Is it possible to salvage Schmitt’s theoretical premises—decisionism, concept of the political, concrete-order-thinking—and his key concepts—sovereignty-as-exception, friend and foe, *nomos* and pan-region—as generic analytics, which can rewrite the history of international law and capture elements of the current geopolitical re-ordering? Clearly, the central axis of Schmitt’s intellectual project revolves around the insufficiencies of legal positivism in answering the question of the state, in

²³ Schmitt, *Politische Theologie II: Die Legende von der Erledigung jeder Politischen Theologie*, Berlin 1970.

historical perspective. He formulated this critique, prior to 1934, from the vantage-point of political decisionism; and thereafter, from the angle of concrete-order-thinking, as a new type of juristic thought—the two methods that frame the categories above.

Analytically, Schmitt's notion of the extra-legal decision which instantiates the politics of the exception—while jurisprudentially an important corrective to the de-politicized world of legal positivism—is little more than a *passe-partout* that can be 'applied' to an indiscriminate range of politics which, under duress, turn to emergency powers. The application of Schmittian concepts to the exception can only descriptively confirm, *a posteriori*, an already instituted state of affairs as a *fait accompli*. The explanation of the emergency is outside their remit; its critique cannot be formulated from within the Schmittian vocabulary. Why is that the case? Since Schmitt's method—be it decisionism, the friend-foe distinction, or concrete-order-thinking—is bereft of any sociology of power, decisionism lacks the analytics to identify what constellation or balance of socio-political forces can activate, in what kind of situation, the politics of the exception and fear. For the state of exception is never a non-relational creation *ex nihilo*—a unique and self-referential event, equivalent to the miracle in theology. It remains bound to the social by an indispensable act of calculation, preceding its declaration, as to its chances of implementation and daily public compliance or resistance by those upon whom it bears: the social relations of sovereignty. The exception remains quintessentially inserted in a relation of power whose reference point remains the social. The decision alone is never decisive. Of the two sides of the exception—the power that invokes it and the power that is being excepted from the normal rule of law—Schmitt only theorizes the first.

Desocialized, Schmitt's conception of sovereignty also remains curiously de-politicized: he seeks to identify an Archimedean point not only outside society, but equally outside politics—super-insulated from any socio-political contestation—in order to neuter domestic politics altogether: ultra-sovereignty. This extra-political vantage point is deliberately chosen—and here political theology and hyper-authoritarianism converge—to pinpoint that chimerical location which re-stabilizes social processes from nowhere, *ex nihilo*, yet with overwhelming force: the apotheosis of the state. But this 'place beyond' really belongs to the sphere of theology proper. Here, at the latest, political theology—the conception of sovereignty modelled on absolutism and the papal *plenitudo*

potestatis—collapses into arbitrary state terror. Schmitt's restrainer, conceptualized as the force that 'holds back', transmogrifies into the anti-Christ itself. Schmitt's conception of sovereignty constitutes a normative prescription, designed specifically for a hyper-authoritarian solution to the intractable crisis of the Weimar state, and cannot function as a generic analytic for ubiquitous invocations of emergency powers. It is singularly unable to gauge the different constellations and transformations between political authority and social relations, geopolitics and international law; ultimately, spatial world-ordering.

Capture of the earth

But this was the task set by *The Nomos of the Earth* and the turn towards concrete-order-thinking in the mid-30s, generating a re-interpretation of history as a succession of spatial-legal *nomoi* which tied Schmitt's present to a seemingly remote and recondite past. Schmitt's glorification of the classical age of the European inter-state civilization—the *ius publicum europaeum*—served the purpose of depicting the Anglo-American conception of international law as degenerate and total, with Nazi Germany and *Großraumpolitik* as their rightful historical nemesis; in fact, the torch-bearer of geopolitical pluralism. Between the two central axes that sustain Schmitt's ideas of sovereignty—the brute act of land appropriation and the extra-political state of exception—his invocation of the *ius publicum* finds no systematic position; his approach to constitutional and international law receives its illumination from these two vantage points—above and below—but not from positivistic law itself. From his discussion of the discoveries of the New World through to the *Großraum* regional blocs, Schmitt's reinterpretation oscillates permanently between two mega-abstractions: the literal acceptance of the *ius publicum*, endorsing a legal positivism and formalism that he otherwise violently contested; and the abstraction of spatial concretion, which was originally meant to provide an antidote to the former. Between these two reifications, any determinate social content and process disappears from view.

For concrete-order-thinking fails to provide guidance on what processes *drive* the politics of land appropriation and world-ordering. This leads to an a-sociological and curiously non-geopolitical—in the sense of geopolitics as an inter-subjective conflict—stance: the nature of 16th-century Spanish absolutism, the relations between the *conquistadores* and the Spanish

Crown, the inter-imperial relations between the expanding European overseas empires remain unexamined. The concrete processes of land appropriation, distribution and property relations in the Americas—the geopolitical clash with the natives as historical subjects—remain not only off-screen, but by definition outside any purely political or geopolitical notion of conquest-as-concretion. In this sense, concrete-order-thinking remains blunt, since the concepts for specifying the dynamics of the social property and authority relations that drive overseas expansion are nowhere developed or deployed. Schmitt's non-sociological account of the New World discoveries is compounded by the absence of an inquiry into the inter-political nature of the encounter. The native Amerindians remain missing from his account of the regionally differentiated resolutions of land and property conflicts. They are not even acknowledged as passive bearers and victims of the incoming Spaniards and Portuguese, but nullified and written out of history. Schmitt conceives of the Americas as a de-subjectified vacuum; the historical analogy between the Atlantic 'spatial revolution' and genocide of the Amerindians, and Hitler's 'spatial revolution' and Judeocide, comes into view.²⁴

Schmitt's interpretation of the classical period of European inter-state civilization, abstracted from the clashing value-claims and competing interests of 'civil society', is a historical fiction. The absolutist states—Schmitt's historical model for his redefinition of sovereignty—rather than institutionalizing a secularized notion of de-personalized sovereignty that neutralized domestic politics and rationalized inter-state relations, remained personalized, socio-politically highly contested, legitimized by divine authority, and embodied in the persons of their respective princes. Their inter-dynastic relations structured the intense geopolitical conflicts over 'land and people' across the period of the *ius publicum*: geopolitical accumulation.

Modes of war

Correlatively, the praxis of *ancien régime* warfare contrasts with Schmitt's non-discriminatory concept of war as bracketed: civilized, rationalized,

²⁴ Mehring notes that Schmitt 'regarded genocide and the Holocaust doubtlessly as crimes', without providing references. 'What did he know and what did he divine' about the Holocaust? 'On this, we can only speculate before the transcription of his war diaries.' Mehring, *Schmitt: Aufstieg und Fall*, pp. 428–9. Schmitt remained silent on the subject for the rest of his life.

limited and humanized. Early modern intra-European wars were not occasional rule-governed contests—prettified by Schmitt as ‘duels’—narrowly circumscribing the external relations of states within an essentially stable inter-state order, but a continuous, structural presence that reached into and transformed their very sociological cores—permanent war-states. *Ancien régime* politics were not only sociologically transformed under the pressure of military rivalries, but eventually exhausted and destroyed by the combination of spiralling war expenditures, mounting public debts, repressive rates of taxation and social discontent. Wars eventually devoured their own masters—dynastic Houses.

While there is some evidence to suggest that the notion of *Kabinettskriege* attempted to rationalize the conduct of battle, the pairing of ‘limited’ and ‘total’ war, which Schmitt adopted from Clausewitz, is too coarse to capture the nature of early modern warfare. Clearly, Napoleonic and post-Napoleonic warfare marks a qualitative shift in the nature of military affairs, though this does not mean that pre-revolutionary warfare can be generically referred to as bracketed or limited in Schmitt’s sense. His idealization of *ancien régime* warfare is compromised by the frequency, magnitude, duration and intensity, as well as the costs and casualties, of early modern conflicts. For example, at the end of the Seven Years’ War, casualty figures in the Prussian Army stood at 180,000 soldiers, which was the equivalent of two-thirds of its total size, and one-ninth of the Prussian population. This was partly due to innovations in military technology, including the development of firearms, artillery and new techniques like infantry volley fire; and partly to the existential threat of territorial dismemberment and re-partition posed by defeat to dynastic Houses. Equally, the conduct of war was not humanized in terms of a clear distinction between combatants and non-combatants (*ius in bello*). The effects of war on civilian populations were devastating. Since war-logistics were not properly developed and soldiers lacked permanent provisioning, early modern armies lived ‘off the land’, either from looting and pillaging on foreign soil, or by way of sequestration and ransom. Armies tended to ransack civilian areas in an effort to feed themselves, causing plunder, rape, famines and population displacement. *Bellum se ipse alet*, ‘war feeds off itself’, captures this predicament.

For while most of these ‘wars of succession’ and ‘trade wars’ were largely re-distributional, in terms of land and control of trade routes, and thus limited in their war-aims, they were simultaneously ‘total’ in so far as

whole regions and kingdoms vanished (Polish Partitions); characterized by an imperial, if not totalizing, drive towards the infinite accumulation of land and booty, as evidenced in their aggressive outward orientation—colonialism. Most of these ‘wars of succession’, from the Wars of the Spanish and Austrian Succession to the Seven Years’ War, were multi-lateral if not ‘world’ wars. This would also qualify Schmitt’s thesis that the assignment of the lands and seas ‘beyond the line’—the externalization of the international state of nature from Europe—caused the civilization of intra-European warfare, as codified in the *droit public de l’Europe*. And how could Schmitt’s insistence on absolutism, as the historical model for a decisionist polity that gave free rein to rulers in imposing domestic law and order, be squared with+ their purportedly law-abiding disposition in foreign affairs and the rationalization of military conduct, formalized in the *ius publicum*? This pretence to legality by the Great Powers is characteristically un-Schmittian. Logically speaking, the legal groundlessness of the subjective decision should have operated in external relations as much as in internal affairs—a conclusion that Schmitt failed to draw, but which is much closer to the historical record.

Missing the social

Furthermore, Britain’s post-1713 balancing of the continental inter-state system—empirically noted by Schmitt, but theoretically reduced to the extra-sociological category of ‘maritime existence’—eclipses a social account of Britain’s transition from feudalism to capitalism and post-1688 transformation from dynastic to constitutional-parliamentarian sovereignty, essential for understanding the timing and socio-political sources of British balancing in the 18th century. At crucial moments in this large-scale re-interpretation—1492, absolutist sovereignty, early modern warfare, British 17th-century sovereignty, the origins of World War One, Hitler’s spatial revolution—the method of concrete-order-thinking disintegrates. It simply fails to reveal the social sources of land appropriations and spatial reconfigurations, transformations in the nature of authority and sovereignty relations, or developments in the historical genealogy of war and peace. Furthermore, world-historical events that upset Schmitt’s spatial-*étatist* perspective—the origins of capitalism and Industrial Revolution; the French Revolution and Napoleon; the late 19th-century New Imperialism and inter-imperial rivalry; the Bolshevik Revolution—are either expunged from his account, or receive short shrift.

Wherever Schmitt attempts to penetrate the social, he either mobilizes a geo-mythological register—British maritime existence, land versus sea—or betrays his own method; this is exemplified by his turn to international political economy, in the form of the Monroe Doctrine and US imperialism, in order to conceptualize the space-cancelling tendencies of international, albeit transnational, capitalism.²⁵ For the predominantly non-territorial nature of the US restructuration of the interwar European order provided a direct refutation of Schmitt's axiomatic thesis of international orders based on land-grabs: Germany, though trimmed in size and regime-changed, like Austria-Hungary and the Ottoman Empire, was neither occupied nor annexed. Schmitt's account of the dissolution of the *ius publicum*—suggesting a constitutive nexus between the space-cancelling tendencies of transnational capital and the transition from the *ius publicum* to the age of international law—directly unhinges the premise of his concrete-order-thinking.

This abrupt turn towards international political economy constitutes a theoretically uncontrolled *volte face*, not licensed by his own method. This forces him to deploy a Hegelian-Marxist figure of thought: the separation between the political and the economic, with its international analogue, the separation between a territorialized inter-state system and a private, transnational world-market.²⁶ Simultaneously, this turn towards the 'separation-argument' cancels his central thesis that the *ius publicum* rested already on the differentiation between public statehood—with the institutionalization of the early modern inter-state system—and private 'civil society'. Schmitt over-interprets the space-and geopolitics-dissolving impact of Anglo-American capitalism after Versailles, effectively embracing a transnational economism that out-Marxed Marx. The combination of the League of Nations system and American grand strategy did not lead to an apolitical 'spaceless universalism' during the interwar period.²⁷ Rather, it only re-constituted and

²⁵ Schmitt, *Land and Sea*, Washington, DC 1997, and Schmitt, *Nomos*, pp. 235–7.

²⁶ 'In an 1842–43 work, the young Karl Marx began with Hegel's diagnosis and went even further in an important observation about the United States. Marx said that, as in 19th-century monarchies, republics, too, had defined the constitution and the state in terms of bourgeois property. Owing to the separation of state and society, politics and economics, he said that the material content of the political state lay outside politics and the constitution.' Schmitt, *Nomos*, pp. 293–4. Schmitt refers to Marx's 'Contribution to a Critique of Hegel's *Philosophy of Right*' (MECW, vol. 3, p. 31).

²⁷ Neil Smith, *American Empire: Roosevelt's Geographer and the Prelude to Globalization*, Berkeley 2004.

aligned European political geography with American economic and security concerns, without erasing the inter-stateness of the Continent—as German *Großraumpolitik* itself was to demonstrate.

A flawed construct

Concrete-order-thinking is singularly unable to provide the concepts, or the historical substance, for an international historical sociology of any human order. It follows that, if Schmitt's international political thought and historical narrative are empirically untenable and theoretically flawed—replete with performative contradictions, subterranean reversals of theoretical positions, omissions and suppressions, mythologizations and flights into *épreuves étymologiques*—then the neo-Schmittian revival hangs suspended in mid-air. Schmitt's concrete-order-thinking constitutes a rudimentary and failed attempt to develop a sociology of international law and geopolitics, which ultimately regresses into a Eurocentric historico-legal theory of geopolitical occupation *tel quel*.

In the end, Schmitt provides no answer to his own question: what processes established the order of the *ius publicum*? The 'concrete' is largely the factual. The descending journey, from the concrete to its manifold inner determinations, and the ascending return journey to the concrete as a 'concrete in thought', captured in its rich inner determinations, is never undertaken.²⁸ The concrete-facticity turns into an abstraction in Schmitt's work. But this cannot really be surprising: concrete-order-thinking remains, throughout Schmitt's work, strictly extra-sociological; as the lateral dynamics of geopolitics and 'land appropriations' remain abstracted from, and non-articulated with, the vertical dynamics of social relations and surplus appropriation. In fact, it is self-consciously anti-sociological, in line with Schmitt's generic *Weltanschauung* as a counter-revolutionary *étatist* thinker. This suppression and elimination

²⁸ The notion of the 'concrete'—alongside 'organic', 'soil-bound' and 'chthonic'—enjoyed a steep career in Nazi ideology as part of a wider idiomatic promotion of the 'ideas of 1914' against the 'ideas of 1789'. It was not so much a neo-Hegelian *Wunderwaffe*, but part of the fascist jargon whose explicit purpose was to counter the 'abstract', 'rationalized' and 'uprooted' nature of social relations inherent in the community-dissolving character of 'Jewish' capitalism. The concretely ordered *Raum* of German provenance had to be defended and restored against the geometric notion of territory as an empty and abstract expanse due to capitalism's de-territorializing tendency.

of social relations was, of course, already prefigured in his concept of the political, which now informed his concept of the geopolitical. Both detach the political, or geopolitical, from the social—in fact, prioritize and valorize the political and geopolitical over and against the social. This renders both the jargon of the exception (the reformulated essence of sovereignty) and the jargon of the concrete (the reformulated essence of territorial orders) abstract, formalistic and explanatorily empty.

Schmitt's reconstruction of international law and order, from Christopher Columbus to Hitler's spatial revolution, receives its decisive illumination from his own concrete political-existential situation in the early 1940s. Less than propaganda or fabrication, but more than tendentiousness, it may be defined as ideology production: a determinate re-interpretation of the history of international law and order. This would be in line with Schmitt's own conception of intellectual labour as an on-going combat that crafts and re-crafts concepts, here situated in a particularly intense and turbulent period that demanded an existential decision on the friend–enemy divide in Germany's struggle for political survival. This moment of supreme political intensity coloured Schmitt's vision of the field of history. Any re-mobilization of Schmittian categories for today's geopolitics needs to be weighed and offset against the fact that Schmitt's core methods—decisionism, concept of the political, concrete-order-thinking—are unable to sustain sociologically the abstract politico-legal register through which he formulated his ultra-realist critique of inter-war reordering and the wider history of international law and order; his political theory comes with a hefty authoritarian political baggage which needs to be addressed.

4. A MULTIPOLAR WORLD ORDER?

For what was Schmitt's prescription against American liberal imperialism? Is there any traction in the notion of the *Großraum* as an antidote to a perceived space-cancelling capitalist universalism? Towards the end of his *Nomos of the Earth*, Schmitt offers three speculative scenarios on the future, post-World War Two international order. First, the overcoming of the existing antithesis between land and sea in favour of one victorious power, establishing ultimate 'world-unity'—a tragedy in Schmittian terms; second, the passing of the 'off-shore balancer' torch from the UK to the US in the Cold War context—a second-worst option; third, a

new balance among a multiplicity of new *Großräume*. This last scenario would be 'rational, if the *Großräume* are differentiated meaningfully and are homogeneous internally.'²⁹ Beyond this, Schmitt remains vague on the inner constitution of each pan-region and on the nature of inter-*Großraum* relations.³⁰

All three conceptions raise different sets of questions, none of which are worked out in any detail. Still, the normative neo-Schmittian argument clearly favours the last scenario. But by any Schmittian reckoning, a reconstruction of his concept of the greater space within his wider theory would require us to distinguish the inner nature of a *Großraum*, its constitution, from its foreign relations, or the structure of inter-*Großraum* relations. To recall: Schmitt's critique of parliamentary democracy and legal positivism, fashioned against the background of the Weimar experience, had led him first towards the affirmation of decisionism and the emphasis on the state of emergency. Schmitt's state could not mediate and arbitrate the tensions of civil society but needed to be insulated from it: to govern against civil society, to provide order. This was grounded in the conviction that industrial society, class conflict and the spectre of a socialist revolution demanded a reformulated theory of the state—and, ultimately, dictatorship. In other words, Germany required a 'restrainer' state, strong enough to de-politicize and neutralize social conflict by decision. But since any spatially expanded pan-region was to be composed of a variety of ethnically heterogeneous groups, creating a power-gradient between the imperial core, the Reich, and its satellites, this power had to be magnified. It also had to include the ability to decide on the 'internal' as well as the external public enemy: the necessary antagonism of the state-constitutive enemy–friend distinction and the ultimate manifestation of sovereignty. Given these Schmittian prescriptions, a re-mobilized notion of *Großraum* cannot be dissociated from Schmitt's theory of the state and racist-identitarian democracy. It would either have to endorse them or, by leaving this Schmittian baggage behind, move the notion of *Großraum* decisively beyond Schmitt's theory of the state and democracy.

²⁹ Schmitt, *Nomos*, p. 355.

³⁰ This vagueness reveals the tactical precautions that Schmitt had to heed under the watchful eyes of the SS, as his *Völkerrechtliche Großraumordnung* went through four editions between spring 1939 and July 1941, forcing him to adjust his *Großraum* idea to the ever more spectacular German foreign-policy successes.

Regional limits

Territorially, along the lines of the Monroe Doctrine's conception of a Western hemisphere, any pan-region would comprise an imperial centre and a string of smaller, subservient states, whose sovereignty would be conditional upon their alignment with the imperial constitution—otherwise 'intervention' would beckon. Still, Schmitt was never able to clarify the exact mode of integration of these smaller states into the new 'greater imperial order'—federal, imperial, vassalic. Equally, Schmitt did not pronounce on the criteria for the territorial extent of each greater space—*völkisch*, martial, constitutional, civilizational, ideological, religious? His required 'homogeneity', however, would, of necessity, entail processes of state-led assimilation and homogenization.

Similarly, Schmitt did not specify the structure of inter-*Großraum* relations. Would a new inter-*Großraum* law emerge, similar to the *ius publicum europaeum*? Unlikely, given the heterogeneous nature of the future pan-regions. Or were relations between these regional blocs to be subject to Schmitt's axiomatic friend-foe distinction, creating a sphere of agonal struggles 'beyond the line', indispensable for maintaining the internal coherence, identity and discipline of each greater space? This seems to be more in line with Schmittian categories, since a singular pan-regions-encompassing *nomos* is inherently a contradiction in his terms, leaving the need for plural *nomoi*—all civilizationally heterogeneous and, in principle, at war with each other. Decisionist authoritarianism, intra-imperial hierarchy and inter-*Großraum* anarchy, modified by balancing, are the most likely elements of Schmitt's future *nomos* of the earth. Any invocation of Schmitt's future order of pan-regions as a model for a pluralist planetary regionalism will need to counter these prescriptions.

Schmitt's refusal retrospectively to discuss his *Großraum*-thinking in relation to National Socialist foreign policy raises the final question of their theoretical compatibility with, and Schmitt's complicity in, Hitler's spatial revolution.³¹ In his answer to Robert Kempner, Deputy Chief Prosecutor at the Nuremberg Trials, written during his post-war

³¹ Schmitt, 'Response to the Question: "To what extent did you provide the theoretical foundation for Hitler's *Großraum* policy?"' [1947], *Telos* 72, 1987, pp. 107–16.

internment, Schmitt remained unapologetic, vehemently denying any intellectual affinity between his *Großraum* conception and National Socialist foreign policy. He equally denied any significant personal contacts with the NS elite after 1936, repeatedly setting out the strictly juridical and scholarly nature of his studies. In fact, he tried to turn the argument around. The political justice that Schmitt once denounced in relation to the Versailles Diktat, but emphatically reclaimed for the total *Führerstaat*—‘the Führer protects the law’—was now conveniently re-invoked to reject Allied policy at the Nuremberg Trials. *Nullum crimen, nulla poena sine lege*. Schmitt’s retroactive redefinition of *Großraum* to a narrow juridical category avoids a facile identification with either organic-biologistic Haushoferian or Hitlerian notions of a greater German *Lebensraum*. But this disingenuous tactical redefinition of his intellectual production—as bearing an objective, non-partisan and scientific character, distant from the pseudo-scientific advocacy of his erstwhile party rivals and nemeses, Reinhard Höhn and Werner Best—appears now in stark contrast to earlier self-confident declarations about the nature of scholarship. ‘All political concepts, images and terms’, Schmitt contended, ‘have a polemical meaning. They are focused on a specific conflict and are bound to a concrete situation.’³² Political science and jurisprudence are themselves subject to, and in the service of, the highest and most intense differentiation—the friend–enemy distinction—which demands an existential act of decision. And Schmitt had taken that decision politically, not juridically. In the end, he felt obliged to re-describe and self-align his intellectual praxis with what constituted his lifelong antithesis—neutralizations and de-politicizations.

5. LEGACIES

In the final section of the biography, Mehring recounts how Schmitt, released after a short period of internment and not charged by the War Crime Tribunals, quickly moved back into intellectual life as a Nestor of various disciplines—history, law, philosophy, political theory—even though the loss of his *venia legendi* denied him a re-appointment as a university professor. He was obliged to hold seminars *privatissime* in his old Plettenberg home, also attending privately convened seminars at Ebrach during the 1950s and 1960s, which were referred to

³² Schmitt, *Concept of the Political*, p. 30.

as counter-universities by their co-organizer Ernst Forsthoff, a former NSDAP member. He refreshed contacts with past colleagues and comrades, found fame and a second intellectual home in Franco's Spain, mocked the tyranny of liberal-constitutional values in the newly founded Federal Republic and the self-attested de-Nazifications of former Nazi colleagues. He soon regained intellectual influence in Western Germany via second- and third-generation disciples, confidantes and interlocutors. Among them were Forsthoff, President of the Supreme Constitutional Court of Cyprus from 1960–63; Ernst-Wolfgang Böckenförde, later a judge on Germany's Constitutional Court; Johannes Winckelmann, editor of Weber's *Wirtschaft und Gesellschaft*; Reinhart Koselleck, Roman Schnur, George Schwab—who introduced Schmitt's work to the Anglosphere—and Odo Marquardt, associated with the Ritter School in Münster.

These are, in many respects, quite dissimilar figures and Mehring clarifies both the intellectual and political distances taken from Schmitt and Schmittian persuasions sustained and developed by key group members. Sufficient commonalities remained for some members of this inner circle to launch in 1961 the politics journal, *Der Staat*, which remains to this day one of Germany's most influential conservative reviews of state and constitutional theory; and to organize and contribute to a series of *Festschriften* until Schmitt's death in 1985, at the age of ninety-six. Koselleck's *Critique and Crisis* and his highly influential multi-volume *Historische Grundbegriffe* project, co-edited by Otto Brunner and Werner Conze—a historical lexicon on socio-political concepts in Germany, predicated on the method of conceptual history—both follow key Schmittian figures of thought, notably in the entries on state of exception, war, peace, international law and state.³³ Wilhelm Grewe, a Schmitt disciple from the first generation and an NSDAP member, was later West German ambassador to Washington, Tokyo and NATO. In 2000 his *Epochs of International Law*, which presents an updated version of Schmitt's *Nomos*, with the great powers as carriers of successive international-law projects, was translated into English.³⁴ In 1955, Grewe had formulated the so-called Hallstein Doctrine, which declared that West Germany would not enter into or maintain diplomatic relations

³³ Reinhart Koselleck, *Critique and Crisis: Enlightenment and the Pathogenesis of Modern Society*, Oxford 1988.

³⁴ Wilhelm Grewe, *The Epochs of International Law*, Berlin and New York 2000.

with any state that recognized the German Democratic Republic. The Doctrine was eventually abandoned by Willy Brandt in the context of *détente*. The list can be extended.³⁵

Mehring's account of Schmitt's formative influence on a wide range of disciplines and their leading exponents, on the legal and diplomatic professions, and on judges in West Germany's Constitutional Court—a liberal reception, he re-assures us—hardly corroborates his opening statement that Schmitt's direct influence is today passed. Indeed, if his academic presence and contemporaneity within Germany is now well established, Schmitt's political renaissance has kept pace too. Otto Depenheuer's 2007 *Self-Preservation of the State of Law*—a law professor at the University of Cologne, Depenheuer is Director of the Institute for State Philosophy and Legal Policy—does not disguise its neo-Schmittian credentials and has been approvingly recommended by Wolfgang Schäuble, then Germany's Home Affairs and now its Finance Minister. Its thesis was promptly tested by the dispatch of *Luftwaffe* Tornados, flying low-level to terrorize protesters at the 2007 G8 Summit in Heiligendamm—a violation of the constitutional separation of the terms of engagement of Germany's military and police.³⁶

Restricted to the German scene, Mehring's optic misses the wider picture. Schmitt spawned intellectual legacies and 'hidden dialogues' outside Germany. Via a range of German *émigrés*—most notably Hans Morgenthau and, to a lesser extent, Leo Strauss—his thought was instrumental in the bifurcation of post-war American international studies into international law, following a legalistic and positivist-formalistic perspective, and international relations, with a power-political orientation.³⁷ But the scholarly legacy appears blameless by comparison to the invocation of the Schmittian friend-foe distinction—only topped by references to Strauss and Nietzsche—within American neo-conservatism. The basic

³⁵ Müller, *A Dangerous Mind*; Christian Joerges and N. Singh Ghaleigh, eds, *Darker Legacies of Law in Europe: The Shadow of National Socialism and Fascism over Europe and its Legal Traditions*, Oxford 2003.

³⁶ Otto Depenheuer, *Selbstbehauptung des Rechtsstaates*, Paderborn 2007.

³⁷ Alfons Söllner, 'German Conservatism in America: Morgenthau's Political Realism', *Telos* 72, 1987, pp. 161–72; Martti Koskenniemi, *The Gentle Civilizer of Nations*, Cambridge 2001, pp. 413–509; William Scheuerman, 'Carl Schmitt and Hans Morgenthau: Realism and Beyond', in Michael Williams, ed., *Realism Reconsidered: The Legacy of Hans Morgenthau in International Relations*, Oxford 2008, pp. 62–91.

concept of the political that Schmitt constructed to defend Germany against American imperialism is now mobilized by neo-conservatives to cultivate an existentialist ethics for a post-welfare, patriotic and heroic community of American values.³⁸ Yet, neo-conservatism reaches beyond this static dualism by adding an ideologically super-charged discourse of democracy- and freedom-promotion, which transcends the mere articulation of geopolitical differences to formulate a dynamic theory of American imperialism: neither 'world-government' nor *Großraum*, but a flexible front of the 'willing' against the 'unwilling', which feeds on the idea of the theatrical management and permanent mobilization of the state of exception—a war without end. The Schmittian net result, sketched in the Bush Doctrine and executed in the global war against terror, includes, *inter alia*: the strengthening of executive prerogatives; the doctrine of pre-emptive war; the abrogation of basic civil liberties; secret renditions and indefinite detentions; the use of torture; war crimes and the refusal to apply the Geneva Convention to prisoners of war. But these intellectual lineages and political legacies—Schmitt's actuality—do not enter Mehring's reflections.

Neutralization?

The biography ends simply with its subject's death and a Schmitt citation from Homer's *Odyssey*, also referenced on his gravestone, which evokes the term *nomos* in a final verbal smoke-screen. No conclusion or postface attempts an overall appraisal of his life and work, or tries to draw the summa of the book. Mehring vanishes behind Schmitt, leaving him the last word. But no biography merely replicates a life, even if—as here—exhaustively sourced from autobiographical documents. It remains an authorial construction, a literary *bios*. Even as Mehring desists from articulating value-judgements, the edentate message of this 'book without a thesis' can be gleaned from a series of empathetic moves: complex and enigmatic personality, contingencies and fateful encounters, entrapment and entanglement, dangers of the twilight zone between science and politics, polyvalences and polymorphology, fate and *fortuna*. Their effect is to dissolve Schmitt's authorship and transform him *sotto voce* from active player into a passive victim of forces beyond his control—a life riding tragically on the waves of history. Schmitt's

³⁸ Jean-François Drolet, 'A Liberalism Betrayed? American Neo-Conservatism and the Theory of International Relations', *Journal of Political Ideologies*, vol. 15, no. 2, 2010, pp. 89–118.

lifelong passion for the autonomy of the decision turns into its opposite. 'I have not decided anything: Hitler has decided'.³⁹ The play with paradox turns surreal.

Mehring's adoption of a largely hermeneutic perspective—Schmitt's Nazi period apart—effectuates a near-merger between the author and his subject matter. This rewriting of Schmitt's biography as quasi-autobiography threatens to silence Mehring's voice altogether, while rendering Schmitt's self-interpretations and self-stylizations affirmative. This authorial self-elimination prevents Mehring from distancing himself from Schmitt's own *ex posteriori* rationalizations of his journey through a disastrous century: his self-description as a 'white raven', caught up and seduced by the *res dura* of power politics; his self-comparison to the tragic figure of Melville's Benito Cereno, the captain taken hostage by his mutinous crew; or his likening of his post-war Plettenberg home to Machiavelli's San Casciano, the externally imposed retreat from his *vita activa* in politics. For Mehring, Schmitt's biography is characterized at bottom by a dual loss, embodied in the two military defeats of 1918 and 1945, which coloured Schmitt's life as a long history of disappointments, mirroring that of 20th-century Germany. Loss and gain, defeat and liberation, agent and victim—none of these crucial differentiations can be made within a purportedly value-neutral encapsulation that remains within the Schmittian world. The work of interpretation dissolves into empathy: *relato refero*—I report what I was told.

In a central passage of his 1989 dissertation on Schmitt, a younger Mehring declares:

Schmitt's partisanship lends an exemplary significance to his work. Every fascination for the scholar has to confront its political consequences, if it does not want to remain naive. This is also true for the more recent attempts to rehabilitate Schmitt by means of his intellectual influence and position in the human and social sciences: all Schmitt research is political, since it remains captured by Schmitt's partisanship as the focal point of his work.⁴⁰

But the measure for confronting its political consequences is neither denial nor moralistic indignation and exasperation—carefully reserved by Mehring for Schmitt's Nazi period, though bracketed for the rest of

³⁹ Mehring, *Schmitt: Aufstieg und Fall*, p. 35.

⁴⁰ Mehring, *Pathetisches Denken*, p. 23.

his life—but a detailed judgement on the limits of Schmitt's intellectual edifice and on the politically acceptable, within the totality of his work; for his times and for ours. If Mehring has backtracked from these earlier admonitions, in an attempt to mainstream and de-politicize Schmitt for a larger audience and a conservative *Zeitgeist*, then this indicates not only a loss of political, normative and intellectual co-ordinates—a *Standpunkt*—but also an unconscious assimilation to Schmitt's long-term trend-line diagnostics of the 20th century as the age of 'neutralizations and de-politicizations', whose plausibility and veracity Schmitt's decisionism and *parti pris* for National Socialism was the first to undermine. The unrelenting trumpeting of the age of neutralizations, a de-ideologized end of history beyond left and right, by the powers that be was itself an ideological exercise of the highest political order—something that Schmitt was clear-eyed enough to recognize and criticize. This simple Schmittian dialectical manoeuvre seems to be lost on Mehring.